

IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES)
v.) DEFENSE PROPOSED CASE
) MANAGEMENT ORDER
MANNING, Bradley E., PFC)
U.S. Army, (b) (6))
Headquarters and Headquarters Company, U.S.)
Army Garrison, Joint Base Myer-Henderson Hall,) DATED: 6 April 2012
Fort Myer, VA 22211)

1. The proposed calendar is based upon several assumptions.
 - a. That the parties will have two weeks from any Article 39(a) to file a motion, two weeks to file a response, one week to file a reply and that the Court will have an additional week to consider the filings prior to the subsequent Article 39(a).
 - b. That the parties will update and propose a revised case calendar after each Article 39(a) to ensure that the order and timing of motions and other matters being considered makes sense and provides for the orderly administration of the case.
2. Per the Court's instructions, the Defense has adopted the Prosecution Proposed Calendar. The prosecution separated the projected issues into seven (7) phases. The Defense has combined phases 3 and 4 into one phase, and combined the consideration of motions from different phases into the same phase in order to avoid any unnecessary delay of the proceedings.
 - a. Phase 1. Completed, with the exception of the Compel Discovery Motion, Motion to Dismiss, and Renewal of Bill of Particulars Request
 - b. Phase 2(a). Legal Motions, excluding Evidentiary Issues (29 March 2012 – 26 April 2012)¹
 - (1) **Defense Motion to Dismiss Article 104 Offense**
 - (A) Filing: 29 March 2012
 - (B) Response: 12 April 2012
 - (C) Reply: 17 April 2012
 - (D) Article 39(a): 24-26 April 2012
 - (2) **Defense Motion to Dismiss Specification 1 of Charge II**
 - (A) Filing: 29 March 2012
 - (B) Response: 12 April 2012

¹ The Defense will not be filing an Unlawful Command Influence motion; an Improper Referral motion, or a Jurisdictional Defects motion.

- (C) Reply: 17 April 2012
- (D) Article 39(a): 24-26 April 2012

(3) Defense Unreasonable Multiplication of Charges Motion

- (A) Filing: 29 March 2012
- (B) Response: 12 April 2012
- (C) Reply: 17 April 2012
- (D) Article 39(a): 24-26 April 2012

(4) Defense Motion to Dismiss All Charges and Specifications with Prejudice

- (A) Filing: 15 March 2012 (already filed)
- (B) Response: 12 April 2012
- (C) Reply: 17 April 2012
- (D) Article 39(a): 24-26 April 2012

(5) Defense Renewal for Motion to Compel Discovery of Computers

- (A) Filing: 29 March 2012
- (B) Response: 12 April 2012
- (C) Reply: 17 April 2012
- (D) Article 39(a): 24-26 April 2012

(6) Defense Renewal for Bill of Particulars

- (A) Filing: 6 April 2012
- (B) Response: 17 April 2012
- (C) Reply: N/A
- (D) Article 39(a): 24-26 April 2012

(7) Reciprocal Discovery Requests

- (A) Filing: 29 March 2012
- (B) Response: 12 April 2012
- (C) Reply: 17 April 2012
- (D) Article 39(a): 24-26 April 2012

(8) MRE 404(b) Disclosures

- (A) Filing: 6 April 2012
- (B) Response: N/A

(9) Government Motion for Appropriate Relief to Preclude Actual Harm or Damage from the Merits Portion of the Trial

- (A) Filing: 29 March 2012
- (B) Response: 12 April 2012
- (C) Reply: 17 April 2012
- (D) Article 39(a): 24-26 April 2012

(10) **Updated Proposed Case Calendar²**

- (A) Filing: 12 April 2012
- (B) Response: 17 April 2012 (if applicable)
- (C) Reply: N/A
- (D) Article 39(a): 24-26 April 2012

(11) **Government Notification to Court of Whether it Anticipates Limited Disclosure or Claim of Privilege**

- (A) Filing: 20 April 2012
- (B) Response: N/A
- (C) Reply: N/A
- (D) Article 39(a): 24-26 April 2012

c. **Phase 2(b). Legal Motions, excluding Evidentiary Issues (10 May 2012 – 8 June 2012)**

- (1) **Defense Motion to Dismiss All Charged Offenses under 18 U.S.C. 793(e)**
 - (A) Filing: 10 May 2012
 - (B) Response: 24 May 2012
 - (C) Reply: 31 May 2012
 - (D) Article 39(a): 7-8 June 2012
- (2) **Defense Motion to Dismiss All Charged Offenses under 18 U.S.C. 1030(a)(1)**
 - (A) Filing: 10 May 2012
 - (B) Response: 24 May 2012
 - (C) Reply: 31 May 2012
 - (D) Article 39(a): 7-8 June 2012
- (3) **Proposed Members Instructions, including elements for all Charged Offenses**
 - (A) Filing: 10 May 2012
 - (B) Response: 24 May 2012
 - (C) Reply: 31 May 2012
 - (D) Article 39(a): 7-8 June 2012
- (4) **Motion for Proposed Lesser Included Offenses³**
 - (A) Filing: 10 May 2012
 - (B) Response: 24 May 2012
 - (C) Reply: 31 May 2012
 - (D) Article 39(a): 7-8 June 2012

² The Defense envisions the parties submitting updated proposed case calendars prior to each Article 39(a). This will enable the Court and the parties to have flexibility in the issues that we address. Additionally, this will enable the Court to be able to announce the date and subject matter for the next Article 39(a).

³ If the parties and Court can agree on the relevant LIOs, this may not be a required motion.

(5) Defense Motion for Appropriate Relief to Exclude Uncharged Misconduct Under MRE 404(b)

- (A) Filing: 10 May 2012
- (B) Response: 24 May 2012
- (C) Reply: 31 May 2012
- (D) Article 39(a): 7-8 June 2012

(6) Government Notification of Limited Disclosure or Claim of Privilege and Litigation Concerning any Proposed Substitutions (including In Camera Review)

- (A) Filing and Notice to Defense: 18 May 2012
- (B) Response: 31 May 2012
- (C) Reply: N/A
- (D) Article 39(a): 7-8 June 2012

(7) Production of Compelled Discovery Classified and Unclassified

- (A) Date: 13 July 2012

d. Phase 3. Evidentiary Issues not Involving Classified Information under MRE 505 (22 June 2012 – 20 July 2012)

(1) Requests for Judicial Notice

- (A) Filing: 22 June 2012
- (B) Response: 6 July 2012
- (C) Reply: 13 July 2012
- (D) Article 39(a): 19-20 July 2012

(2) Witness Lists Exchange

- (A) Filing: 19 July 2012⁴

(3) Motion to Suppress

- (A) Filing: 22 June 2012
- (B) Response: 6 July 2012
- (C) Reply: 13 July 2012
- (D) Article 39(a): 19-20 July 2012

(4) Compel Discovery #2⁵

- (A) Filing: 22 June 2012
- (B) Response: 6 July 2012
- (C) Reply: 13 July 2012
- (D) Article 39(a): 19-20 July 2012

⁴ The Defense will need to have access to compelled discovery in order to identify needed witnesses. The Government should provide notice of its intent to oppose production of any witness by 26 July 2012.

⁵ The Government believes that the Defense will file at least one additional motion to compel discovery for unclassified information based upon additional information learned by that point. The Defense does not know if this is accurate, but accepts the Government's representation as a possibility.

(5) Motion in Limine

- (A) Filing: 22 June 2012
- (B) Response: 6 July 2012
- (C) Reply: 13 July 2012
- (D) Article 39(a): 19-20 July 2012

(6) Privileges

- (A) Filing: 22 June 2012
- (B) Response: 6 July 2012
- (C) Reply: 13 July 2012
- (D) Article 39(a): 19-20 July 2012

(7) Defense Notice of Intent to Disclose Classified Information under MRE 505(h)

- (A) Filing: 20 July 2012

(8) Defense Notice of Accused's Forum Selection and Notice of Pleas in Writing

- (A) Filing: 20 July 2012⁶

e. Phase 4. Evidentiary Issues Involving Both Unclassified and Classified Information under MRE 505 and Miscellaneous Motions (3 August 2012 – 31 August 2012)⁷

(1) Compel Experts

- (A) Filing: 3 August 2012
- (B) Response: 17 August 2012
- (C) Reply: 24 August 2012
- (D) Article 39(a): 29-31 August 2012

(2) Compel Witnesses

- (A) Filing: 3 August 2012
- (B) Response: 17 August 2012
- (C) Reply: 24 August 2012
- (D) Article 39(a): 29-31 August 2012

(3) Defense Article 13 Motion

- (A) Filing: 27 July 2012⁸

⁶ Pursuant to the Government's request, this date provides the United States with forum selection and notice of pleas at least sixty days prior to trial in order to coordinate for extended special duty and travel.

⁷ The Government requests two separate time periods to pre-authenticate evidence; pre-admit evidence; and pre-qualify expert witnesses. The Court should deny the Government's request to pre-authenticate and admit numerous pieces of evidence and foundational testimony in advance of the court-martial. Instead, the Defense requests that the Court consider all evidence on an individual basis during the court-martial. However, if the Court is inclined to pre-authenticate evidence, pre-admit evidence, and pre-qualify expert witnesses, the Defense would request that the 27th and 28th of August be set aside to accomplish this task.

⁸ The filing date is a week earlier for the Defense in order to provide the United States with one additional week for its response.

- (B) Response: 17 August 2012
- (C) Reply: 24 August 2012
- (D) Article 39(a): 29-31 August 2012

(4) Defense Speedy Trial – Article 10 Motion

- (A) Filing: 27 July 2012⁹
- (B) Response: 17 August 2012
- (C) Reply: 24 August 2012
- (D) Article 39(a): 29-31 August 2012

(5) Any Additional Motion Without an Identified Deadline

- (A) Filing: 3 August 2012
- (B) Response: 17 August 2012
- (C) Reply: 24 August 2012
- (D) Article 39(a): 29-31 August 2012

(6) Member Proposed Questionnaires

- (A) Filing: 3 August 2012
- (B) Response: 17 August 2012
- (C) Reply: 24 August 2012
- (D) Article 39(a): 29-31 August 2012

(7) Government Notification of Limited Disclosure or Claim of Privilege and Litigation Concerning any Proposed Substitutions (including In Camera Review) for Compelled Discovery #2¹⁰

- (A) Filing: 3 August 2012
- (B) Response: 17 August 2012
- (C) Reply: 24 August 2012
- (D) Article 39(a): 29-31 August 2012

(8) Production of Compelled Discovery for Defense Motion to Compel Discovery #2 that is not the subject of a Limited Disclosure Request, Proposed Substitution, or Claim of Privilege

- (A) Filing: 17 August 2012¹¹

f. Phase 5. Grunden and Panel Member Issues (24 August 2012 – 21 September 2012)

(1) Grunden Hearing for all Classified Information

- (A) Filing: 24 August 2012
- (B) Response: 7 September 2012
- (C) Reply: 14 September 2012

⁹ The filing date is a week earlier for the Defense in order to provide the United States with one additional week for its response.

¹⁰ This motion is only necessary if the Defense files a second motion to compel discovery.

¹¹ This date is only applicable if the Defense files a second motion to compel discovery.

(D) Article 39(a): 21 September 2012¹²

(2) **Voir Dire Questions**

- (A) Filing: 14 September 2012
- (B) Response: N/A
- (C) Reply: N/A
- (D) Article 39(a): 21 September 2012

(3) **Flyer Due**

- (A) Filing: 14 September 2012
- (B) Response: N/A
- (C) Reply: N/A
- (D) Article 39(a): 21 September 2012

g. **Phase 6. Trial by Members (21 September 2012 – 12 October 2012)**

(1) Article 39(a): 21 September 2012

(2) Voir Dire: 24 September 2012

(3) Trial: 24 September – 28 September 2012; 1 October – 5 October; 8 October – 12 October 2012

DAVID EDWARD COOMBS
Civilian Defense Counsel

¹² The Court will also, if necessary, address any classified discovery that is the subject of a second motion to compel discovery by the Defense.